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METRO GIANT GROUP SDN BHD

v.

GALA SARI RESOURCES SDN BHD & ORS (NO 2)

B

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[CIVIL SUIT NO: D8-22-1255-2004]
17 AUGUST 2007

C ***CIVIL PROCEDURE:*** *Affidavits - Affidavit verifying list of documents - Antedated letters included in list of documents - Whether constitutes contempt - Affidavit verifying list of documents is not meant to verify truth of contents of documents*

D ***CIVIL PROCEDURE:*** *Documents - Affidavit verifying list of documents - Whether affidavit verifying list of documents is also meant to verify truth of contents of documents - Antedated letters included in list of documents - Whether constitutes contempt - No evidence of these letters being intended to be used to mislead court*

E ***CIVIL PROCEDURE:*** *Contempt of court - Order of committal, application for - Standard of proof - Contempt proceedings is quasi criminal in nature - Plaintiff to prove charges beyond reasonable doubt*

CIVIL PROCEDURE: *Contempt of court - Order of committal,*
F *application for - Allegation of antedated letters included in list of documents in affidavit verifying list of documents - Whether constitutes contempt - No evidence of these letters being intended to be used to mislead court*

G ***CIVIL PROCEDURE:*** *Contempt of court - Leave to initiate contempt proceedings - Duty of court at leave stage - Court to examine whether alleged contempt justifies a competent hearing - Whether court at leave stage should be concerned with reasons and circumstances of alleged contempt*

H This application under O. 52 r. 2(2) of the Rules of the High Court 1980 ('RHC') was for an order of committal against the 4th defendant and 4 other parties. The suit arose from an agreement whereby the plaintiff sold the shares in the 3rd defendant to the 1st defendant. The court had ordered the 4th
I defendant to file an affidavit verifying the list of documents which they had in their possession. The affidavit filed by the 4th defendant referred to certain letters which the plaintiff claimed had

been fabricated to convey the fact that they were in existence on 10 July 2003, 13 October 2003, 31 December 2003 respectively when in fact they did not exist on those dates. They contained the address of the 5th contemnor (a solicitor), stated to be at No. 148-3A, Jalan Tun Sambanthan 50470 Kuala Lumpur as the address to which the letters were sent to and the address at which the letters were received. However, on the dates on which the letters were purportedly issued, sent and received, the 5th contemnor was not practising at that address. The contemnors admitted that these letters did not exist on those dates and that they were not received by the 5th contemnor on those dates stated. The contemnors claimed that those parts in the letters which were referred to by them which they alleged to be true were irrelevant for purposes of these contempt proceedings but were matters for trial. The defendants claimed that the letters were not meant to deceive the court.

Held:

(1) The affidavit was meant to verify the list of documents which the 4th defendant had in its possession in due compliance with O. 24 r. 3 of the RHC. It was not meant at that stage to verify the truth of their contents. It was open to the defendants, the 5th contemnor and persons who wrote the letters to say at the trial of the suit that in truth the letters were antedated. The mere antedating of the three letters did not under the circumstances constitute a contempt which required an intention on the part of the perpetrators to use them to mislead the court. Until and unless the alleged contemnors used the letters as evidence to show that they were in fact written on the dates as stated on the letters and not on the latter dates when they were signed, no contempt was committed. (para 25)

(2) A contempt proceedings is quasi criminal in nature and the plaintiff is obliged to prove the charges beyond reasonable doubt. The plaintiff had failed to do so. (para 26)

(3) The defendants' applications to set aside the leave granted to the plaintiff to initiate the contempt proceedings was however disallowed. The leave was granted on the basis that there was evidence before the court that the three letters were written at the time when the addressee M/s Cheng Poh Heng & Co. had not yet set up shop at the said premises thereby providing ample justification for the court to conclude that at that stage

in all probability those letters had been fabricated. The court at that stage should not be concerned with the reasons and circumstances under which those letters were written but with the question of whether those letters were forged and therefore constituted contempt which justified a competent hearing. (paras 28 & 29)

Case(s) referred to:
Emperor v. Govind Singh [1926] AIR Patna 535 ***(refd)***
JI Moses v. A Ramanatha Iyer [1941] Mad Cr C 84 ***(refd)***
Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd [2002] 4 CLJ 401 FC ***(refd)***
Murray Hiebert v. Chandra Sri Ram [1999] 4 CLJ 65 CA ***(refd)***
PP v. Straits Times (Malaya) Bhd [1971] 1 MLJ 69 ***(refd)***
R v. Selvage and another [1982] 1 All ER 96 ***(refd)***
Upendra Nath Chatterjee v. Emperor [1935-1936] Vol XL 40 CWN 313 ***(refd)***
William Jacks & Co (M) Sdn Bhd v. Chemquip (M) Sdn Bhd & Anor [1994] 3 CLJ 125 HC ***(refd)***

Legislation referred to:
Penal Code, ss. 192, 464
Rules of the High Court 1980, O. 24 rr. 3, 5, O. 52 r. 2(2)

Other source(s) referred to:
Halsbury's, 4th edn, vol 13, p 2
Malaysian High Court Practice 2006, Desk Edition, Vol 1

For the plaintiff - Yusof Khan (Mathew Thomas Philip, Balan Nair Thamodaran & Md Yunus Sharif with him); M/s Thomas Philip
For the 1st & 3rd contemnor - Justin Voon (Elvin Lai with him); M/s Sidek Teoh Wong & Denis
For the 2nd contemnor - Richard Wee Thian Seng; M/s YH Teh & Quek
For the 4th contemnor - Dato' Dr Cyrus Das (Saranjit Singh with him); M/s Vasdev Bakshani & Assoc
For the 5th contemnor - KT Wong; M/s KT Wong & Co

Reported by Amutha Suppayah

JUDGMENT

Kang Hwee Gee J:

[1] Parties are agreed that the two sets of encls. 214, 223, 225, 231 and 246 (applications to set aside) and encl. 202 for committal proper to be heard together in order to save time.

[2] This application under O. 52 r. 2(2) of the Rules of the High Court 1980 is for an order of committal against:

i) Wisecap Ventures Sdn Bhd

ii) Kung Teong Eng (director)

iii) Rosnita binti Abdul Aziz (director)

iv) Dato' Abdul Ghani bin Yusof (third party)

v) Cheng Poh Heng (solicitor)

[3] The suit D8-22-1255-04 came up for the case management before the late Justice Abdul Wahab Said Ahmad on 3 April 2006 and he ordered all the parties including the 4th defendant to file an affidavit verifying the list of documents which they had in their possession within one month from 3 April 2006 presumably under O. 24 r. 3 of the Rules of the High Court 1980.

[4] The 4th defendant failed to do so within the one month period and the case management was postponed to 4 July 2006, then to 5 September 2006 and subsequently to 6 October 2006 on account of the 4th defendant's failure to file and serve the affidavit verifying the list of documents.

[5] On 20 October 2006 the 4th defendant finally filed the affidavit verifying the list of documents it had in its possession. The said affidavit refers to the following documents amongst others for purposes of the trial of the main action:

i) Letter dated 10 July 2003 written by Dato' Ghani to M/S Cheng Poh Heng;

ii) Letter dated 13 October 2003 written by Dato' Ghani to M/S Cheng Poh Heng;

iii) Letter dated 31 December 2003 written by Wisecap Ventures Sdn Bhd (the 4th defendant in the main action) to M/S Cheng Poh Heng.

[6] The letters are exhibited as exh. "ARO4" in encl. 203.

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[7] Submission Of Counsel For The Plaintiff

1. The letters in question were fabricated to convey the fact that they were in existence on 10 July 2003, 13 October 2003, 31 December 2003 respectively when in fact they did not exist on those dates.

B

This fabrication is apparent from the letters themselves which:

i) contain the address of Cheng Poh Heng stated to be at No. 148-3A, Jalan Tun Sambanthan 50470 Kuala Lumpur as the address to which the letters were sent to and the address at which the letters were received;

C

ii) at all material times ie, the dates on which the letters were purportedly issued, sent and received (10 July 2003, 13 October 2003 and 31 December 2003) Cheng Poh Heng was not practising at No. 148-3A, Jalan Tun Sambanthan 50470 Kuala Lumpur.

D

This fact is confirmed by the Malaysian Bar Council which confirmed that Cheng Poh Heng's practice as advocate and solicitor was not at the material time at 148-3A but at 146-2A Jalan Tun Sambanthan and that the address of his practice at 148-3A was only with effect from 2 January 2004, that means six months later.

E

F

See exh. "ARO7" encl. 203 and confirmed at exh. "ARO5" encl. 203.

iii) At all material times that is on the dates when the letters were purportedly sent and delivered *viz* 10 July 2003, 13 October 2003 and 31 December 2003 Cheng Poh Heng was not even at the said address stated in those letters.

G

2. The letters in question it is submitted were not even in existence on the dates stated and could not have acknowledged receipt by Cheng Poh Heng on the said dates as expressly endorsed by him on those respective letters.

H

Dato' Abdul Ghani at paras. 18 and 22 of his 1st affidavit affirmed on 12 February 2007 alleges that the letters dated 10 July 2003 and 13 October 2003 were not prepared on the dates stated on the letters and were only prepared on 28 January 2004. He also admits that Cheng Poh Heng did not

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acknowledge receipt on the dates stated in the letters. This is apparent at p. 11 of Dato' Ghani's affidavit affirmed on 12 February 2007.

3. Dato' Ghani also confirmed that the letters were antedated with reference to the dates of issuance and acknowledgement of receipts and these letters are to be used at the pending hearing of the action. Refer to para. 18 of the affidavit.

4. The explanation that the letters were made on or around 24 January 2004 is not only inherently improbable and contradictory but it also confirms the contempt in that Dato' Ghani's claim that the letter was prepared on 24 January 2004 cannot be true. At para. 15 of his affidavit dated 12 February 2007 he averred as follows:

> I respectfully state that the first 2 payments I had made to CPH were not under the cover of any letter for the purpose of recording the purpose of the payment to CPH or any acknowledgement of receipt of the same. I also understand that no cover letter was issued by the 4th Defendant in respect of its payment on 31.12.2003.

5. By fabricating these letters it is obvious that the letters were meant to show that there could not be a restitution of the shares (the relief which we are seeking) as loans had been obtained from Wisecap and the shares were used as security for the loan.

6. The alleged contemnor Dato' Ghani's explanation at para. 16 of his affidavit is that:

> I further state that on the 3rd occasion when I made the payment to Cheng Poh Heng, the said payment was made accompanied by a cover letter stipulating the particulars of the payment and a request for CPH's written acknowlegement of the said payments. I also prepared similar letters of the type I had used as the cover letter for the 3rd occasion and dated it on the same day on which I had made payments to CPH. My purpose was to regularize the earlier omission to use the cover letter when making the payment and to place on record that each of these payments was for the same objective under the Financial Arrangement with the 4th Defendant. I also advised the 4th defendant to similarly regularize their payment to CPH with a cover letter.

In para. 17 of his affidavit Dato' Ghani states as follows:

> The said letters were then prepared and sent to CPH for his acknowlegement. I had discussed the purpose and necessity of these letters with CPH as I needed CPH's agreement in this regard. CPH acknowledged the rationale of keeping proper records particularly when large sums were involved and immediately obliged as the payments were made and the contents of the letters though antedated, were not untrue as it recorded events that had transpired.

7. Cheng Poh Heng as a solicitor is obliged under the Legal Profession Act 1976 to keep a proper record of client's money in accordance with the Solicitors Accounts Rules 1990. A receipt by Cheng Poh Heng would have sufficed if indeed Dato' Ghani needed to "regularize" the payments made to Cheng Poh Heng. Therefore, Dato' Ghani's explanation that he needed to regularize the matter by making cover letters on 24 January 2004 is an inherently incredible and improbable afterthought.

8. There are inconsistencies and contradictions and unexplained issues with regard to the preparation of the letters in question.

i) Rosnita. In para. 15 of her affidavit dated 12 February 2007 states that the 4th defendant only received the letters in late 2006. She further states that in late January 2004 she was given the letter dated 31 December 2003 for her to sign but that she did not prepare the letters. Who prepared the letter was however not disclosed.

ii) Kung Teong Eng in his affidavit dated 8 March 2007 states that he did not prepare or sign the said letters.

iii) However, Kung Teong Eng in para. 16(iii) of the affidavit states "Surat Wisecap Ventures Sdn Bhd yang ditulis oleh Rosnita kepada Tetuan Cheng Poh Heng yang bertarikh 31 December 2003."

iv) Dato' Ghani in his affidavit dated 12 February 2007 at para. 16 says as follows:

> ... Saya juga telah menasihati Defendan Keempat untuk melakukan regulirasi yang serupa berkenaan pembayaran mereka kepada CPH dengan menyertakan sekali surat pembuka.

However, in his affidavit (Dato' Abdul Ghani's) dated 19 March 2007, he contradicts himself at para. 11(a) that:

> ... saya telah dinasihati oleh Defendant Keempat untuk mendapatkan pengakuan bertulis untuk pembayaran RM1.0 juta kepada CPH.

iv) The letters dated 10 July 2003, 13 October 2003 are stated to have been carbon copied to the 4th defendant but no explanation has been offered as to why the 4th defendant did not possess these letters until late 2006 if they were in fact carbon copied to the 4th defendant.

v) No explanation has been offered as to why it took the 4th defendant seven months since the date of the Court Order to produce these documents.

9. In view of these inconsistencies and contradiction I submit that this is a fit and proper case for cross-examination of the alleged contemnors on their affidavits with regard the letters in question for the court to determine.

10. By producing the 3 letters in the 4th defendant's affidavit verifying their list of documents the alleged contemnors had resorted to deceitful conduct meant to interfere with, obstruct, pervert and/or undermine the due administration and course of justice in that the 3 letters were intended and meant to be used as evidence at the trial of the action and thereby to induce this Honourable Court to accept and believe that the letters were issued, sent and received at the address stated on the dates stated on the said letters when this is actually untrue and to use these letters to build up a case for the defendants in the main action.

[8] Submission By Counsel For The 1st And 3rd Contemnors, Encik Justin Voon

1. It does not fulfil the criteria where it is proven beyond reasonable doubt. There are many uncertainties in the facts and circumstances and the plaintiff has not made up the case based on the statement pursuant to O. 52 of the RHC that they were in fact firstly fabrication of false documents. Refer encl. 193 p. 5 para. 4.1: "membuat dokumen-dokumen palsu." Paragraph 4.2: "mereka-rekakan keterangan palsu yang terkandung di dalam dokumen-dokumen palsu tersebut." See

A chart produced. The affidavit verifying list of documents which the 4th defendant has in its possession discloses various other documents apart from the 3 letters to show that the loan transpired.

B 2. The first letter 10.7.2003 from Dato' Ghani (4th contemnor) to Cheng Poh Heng (5th contemnor – solicitor). The contents of the letter are true in all respect. This is verified by the deposit slip dated 10 July 2003. Therefore the first paragraph is true. The 2nd paragraph is supported by the loan C documents at p. 20 encl. 205 as well as pp. 23 to 28. (These are not disputed.)

3. These letters were not prepared by my client but by Dato' Ghani and were given to my client and my client received them in good faith.
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4. 2nd letter 13 October 2003 p. 31: same submission as 1st letter. There is also a banking slip to support the contents of the letter which had also been included in the list of documents.
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5. 3rd letter 31 December 2003: my client's own letter. Contents of letter similar relating to payment of purchase price under the S&P. Payment can be verified by banking slip p. 38 dated 31 December 2003. The person who signed this letter is F Rosnita binti Abdul Aziz – 3rd contemnor. She is a nominee director of an individual Dato' Abdul Halim bin Abdul Samad. This is disclosed in her affidavit para. 9 of encl. 209. She had acted on the instruction of the principal Dato' Halim. Dato' Ghani had prepared all three letters admitted by Ghani himself G in his affidavit. My client signed it on the basis that it would serve as a record.

6. All three letters have banking slips to prove payment on the respective dates.

H 7. Dato' Ghani's affidavit explained why the three letters were written antedating – solely for purpose of record and documentation (para. 22 of encl. 213).

8. The documents did not tell a lie. So it cannot be a fabricated I evidence. Only the dates were different.

9. The documents were produced by my client (1st contemnor) in abeyance to the process of discovery because they were in my client's possession. They were not involved in preparing the letter nor acknowledgement of receipt of letter. When my client signed the last letter, acknowledgement did not exist.

Submission By Counsel For The 2nd Contemnor, Encik Richard Wee

[9] I just took over the case yesterday. I am adopting the submission of Encik Justin Voon, counsel for the 1st and 3rd contemnors. Further I wish to add more points:

1. The 2nd contemnor is the director of 4th defendant as a nominee of Encik Shorbani.

2. The 2nd contemnor's position in this company is because he affirmed an affidavit verifying document of which in that this document he verified includes the 3 letters which were earlier explained and referred to by counsel for the 1st and 3rd contemnors.

3. He is not verifying the 3 documents as "benar" but merely verifying that the "senarai dokumen" as "benar". See O. 24 r. 5 of the RHC read with Form 40. See also O. 24 r. 3 requiring deponent to file affidavit verifying such a list of documents.

[10] Submission By Counsel For The Alleged Contemnor, Dato' Dr. Cyrus Das

1. The gist of the complaint to support this application to cite the alleged contemnor for contempt is that they had:

   i) fabricated documents; and

   ii) fabricated document evidence in the falsified documents;

   and thereby obstructed the administration of justice with the intention of misleading the Honourable Court.

2. The three impuned letters were part of four letters relating to the same transaction. Of the three impuned letters, two of them were signed by Dato' Ghani and the other one by Rosnita. All three letters refer to the same transaction and

they refer to certain payments made to the client's bank account of M/s Cheng Poh Heng and Co. the solicitor for the purchaser Gala Sari Resources (1st defendant). The 4th letter is dated 28 January 2004 also signed by Dato' Ghani and referred to the same transaction. It is not disputed by the applicant in their statement that the 4th letter dated 28 January 2004 was a contemporaneous letter that is to say it was written and dated on the same day. This letter was not antedated. All these letters refer to the payment with respect to the purchase of 14.4% of the stake in the 3rd defendant company to the value of RM13 million. All the payments in the 4 letters added up to RM5.5 million being part of the purchase price and it is not disputed that they were paid over and received by the applicant plaintiff on 4 February 2004. See encl. 213 pp. 38 and 39. These letters reflect that the total sum of RM5.5 million was paid to the solicitor for Gala Sari, 5th contemnor (1st defendant's previous solicitor) who in turn paid the sum of RM5.5 million to the plaintiff"s solicitor M/s Choy & Associates on 4 February 2004.

3. The date of the banking transactions and the total payment of RM5.5 million to the solicitor for the plaintiff/applicant on 4 February 2004 is important because it would verify the truth of the contents of the 4 letters including the three antedated letters. (Correction with respect to the payment of RM4 million they were paid by telegraphic transfers on different dates and the proof of payment is by credit advice from the bank not by a paying slip.)

4. The truth of the contents of the letters can be supported by agreements which had been legally drawn up namely the Variation Agreement exhibited at p. 18 of encl. 213, the Loan Agreement dated 10 July 2003 exhibited at p. 25 of encl. 213.

5. The Loan Agreement is material because it shows that there was a Financing Agreement between Wisecap (the 4th defendant) as financier and Gala Sari (the 1st defendant) as purchaser cum borrower. The Variation Agreement is material because it gave an option to the vendor ie, the plaintiff to withdraw early any purchase money paid to M/s Cheng Poh Heng and Co. as solicitor for the purchaser Gala Sari. The Variation Agreement expressly mentioned M/s Cheng Poh Heng & Co. as receipient of the purchase money. In this

respect the loan arrangement that Dato' Ghani had with the two individual Dato' Halim and Encik Shorbani is also documented in a letter dated 9 July 2003 addressed to Wisecap, the 4th defendant, by Dato' Ghani that he would finance Wisecap up to the limit of RM7.5 million.

6. When one really looks at the real complaint in the statement under O. 52 it boils down to the complaint of antedating and that this antedating was done with a view of misleading the court:

i) mere antedating a letter is not a fabrication or the creation of false document in law. See s. 464 of the Penal Code which carries the definition of false document. Also see s. 192 of the Penal Code. See *Emperor v. Govind Singh* [1926] AIR Patna 535 at 536: antedating document not necessarily forgery where there is no dishonest intention to deceive. Where contents can be proved to be true held no forgery – *J.I. Moses v. A. Ramanatha Iyer* [1941] Mad. Cr. C. 84.

ii) See *Public Prosecutor v. Straits Times (Malaya) Bhd* [1971] 1 MLJ 69 and *R v. Selvage and another* [1982] 1 All ER 96. The documents impuned had been made pre-litigation and was therefore not made in contemplation of litigation which only began seven months later.

iii) Burden lies on the plaintiff to prove beyond reasonable doubt that the impugned documents were fabricated, that there was a falsification of the contents and it was done with the objective of obstructing justice and misleading the court.

[11] Counsel for the 5th alleged contemnor adopts submission of the counsel for the 4th contemnor. Further when the fourth payment of RM2 million was made to the 5th alleged contemnor on 28 January 2004 it was accompanied by 3 cover letters dated the same day that is 10 July 2003, 13 October 2003 and 31 December 2003 on which the payments were made to the 5th alleged contemnor for his acknowledgement. The dates corresponded to the days the letters were signed. It shows that there was no intention to fabricate or mislead this Honourable Court.

[12] The allegation of the fabrication of false evidence does not touch upon a point material to the proceeding in the D8 suit.

Reply By Counsel For The Plaintiff

[13] The contempt is confined to the 3 letters. Hence references by the contemnors to other letters and documents pertaining to the loan agreement between the 1st and 4th defendants are irrelevant not being the subject matter of this contempt proceeding. The letters are fabrication to convey the impression that they existed on those dates stated thereon and that they were received by the 5th contemnor on those dates as endorsed by the advocate and solicitor (the 5th contemnor). The contemnors admit that these letters did not exist on those dates stated in the letters and that they were not received by the 5th contemnor on those dates stated. The truth of those parts in those letters which were referred to by the contemnors which they alleged to be true are irrelevant for purposes of these contempt proceedings but are matters for trial. The contention that these letters were prepared for internal record purposes is refuted by the 4th contemnor's affidavit *vide* encl. 213 para. 23. These letters were in fact used in the discovery process which is an integral step in the main action which had commenced in August 2004. See *Halsbury's* 4th edn, vol. 13 p. 2:

> **1. Meaning and function of discovery.** The term "discovery" in this title is used to describe the process by which the parties to a civil cause or matter are enabled to obtain, within certain defined limits, full information of the existence and the contents of all relevant documents relating to the matters in question between them. The process of the discovery of documents operates generally in three successive stages, namely (1) the disclosure in writing by one party to the other of all the documents which he has or has had in his possession, custody or power relating to matters in question in the proceedings; (2) the inspection of the documents disclosed, other than those for which privilege from or other objection to production is properly claimed or raised; and (3) the production of the documents disclosed either for inspection by the opposite party or to the court.
>
> The function of the discovery of documents is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their respective cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby

enabled to use before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to documentary evidence and to reduce the costs of the litigation.

[14] Refer to *R v. Selvage and another* [1982] 1 All ER 96 where at Held:

An act could not have a tendency to pervert the course of justice unless proceedings of some kind were in being or imminent or an investigation was in progress which might bring about proceedings, so that a course of justice had been embarked on. Since there were no such proceedings or investigation in being, imminent or in progress and since no actual proceedings were within the contemplation of S or M it could not be said that a course of justice had been embarked on when Sand M acted as they did. Accordingly, the offences had not been made out and the judge ought to have directed the jury to acquit the defendants. The appeals would therefore be allowed and the convictions quashed (see p 99 c d, p 102 g h, p 103 b to d and f to h and p 105 b, post).

Dictum of Lord McDermott LCJ in *R v. Bailey* [1956] N1 at 26 followed.

R v. Vreones [1891] 1QB 360 distinguished.

Per curiam. (1) Altering the record of endorsements on a driving licence in order to procure that in the event of the licence holder committing in the future another road traffic offence the court will sentence him in ignorance of his previous offences does not set in motion a course of justice for the purpose of constituting an attempt to pervert the course of justice (see p 103 j to p 104 b, post).

(2) An intention to pervert the course of justice is an essential ingredient of the offence of perverting the course of justice and it is insufficient to establish merely that the accused's acts had a tendency to pervert the course of justice (see p 104 e f and j to p 105 a, post); dictum of Pollock B in *R v. Vreones* [1891] 1 QB at 369 followed.

[15] Refer to *Upendra Nath Chatterjee v. Emperor* [1935-1936] Vol. XL. 40 C.W.N. 313.

[16] See *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 CLJ 401 at p. 410:

> In view of the generality of the phrase 'interference with the due administration of justice', we are of the view that the categories of contempt are never closed. To that extent we respectfully endorse the statement made by Low Hop Bing J, in *Chandra Sri Ram v. Murray Hiebert* [1997] 3 MLJ 240 at p 270:
>
> > The circumstances and categories of facts which may arise and which may constitute contempt of court, in a particular case, are never closed. This is the same position as in the case of negligence in which the scope for development is limitless. Contempt of court may arise from any act or form whatsoever, ranging from libel or slander emanating from any contemptuous utterance, news item, report or article, to an act of disobedience to a court order or a failure to comply with a procedural requirement established by law. Any of these acts, in varying degrees, affects the administration of justice or may impede the fair trial of sub judice matters, civil or criminal, for the time being pending in any court.
>
> > The particular matrix of the individual case is of paramount importance in determining whether a particular circumstance attracts the application of the law of contempt. Hence, a positive perception of the facts is a prerequisite in deciding whether or not there is any contravention necessitating the invocation of the law of contempt.

[17] The fact that the letters are yet to be used at the trial proper is relevant because for the purposes of contempt with regard to interference for justice. It is not necessary to prove that there was actual interference with the administration of justice. It is enough if it is likely or tends in any way to interfere with the proper administration of justice. Refer *Murray Hiebert v. Chandra Sri Ram* [1999] 4 MLJ 321 at 322 at Held (4):

> (per Ahmad Fairuz JCA) The correct test applicable in contempt proceedings had been applied by the trial judge. The term 'real risk' introduced in *Reg v. Duffy & Ors; ex p Nash* [1960] 2 QB 188 was never intended to qualify the tests used in earlier cases. Therefore, the trial judge was correct when he held that in order to constitute contempt of court, it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice. It is enough if it is likely or it tends in

any way to interfere with the proper administration of justice (see p 332D-G); *PP v. The Straits Times Press Ltd* [1949] MLJ 81; *PP v. SRN Palaniappan & Ors* [1949] MLJ 246 and *Re Sin Poh Amalgamated Ltd & Ors* [1954] MLJ 152 followed.

[18] The exchange of documents in the discovery process is an important step as it may influence or affect the cause of a party's conduct in litigation in question because based on what is discovered a party may even withdraw his whole claim or relinquish part of his claim. It is therefore humbly submitted that it is no answer in the case of contempt against a corporation for its directors to maintain that he or she is merely a nominee or sleeping director. Refer *William Jacks & Co. (M) Sdn Bhd v. Chemquip (M) Sdn Bhd & Anor* [1994] 3 CLJ 125 at 126 held [2]:

Directors of a company who have been notified of an injunction are liable for the breach of the injunction by the company and it is no defence to claim that they were "sleeping directors".

[19] No credible answer or explanation have been proferred by all the 5 contemnors against discharge of contempt of this Honourable Court and hence they have not shown cause as to why all five should not be committed to prison for contempt especially to this case which relates to interference to the due administration of justice. See *52.1.12 Malaysian High Court Practice* 2006 Desk Edition Volume 1:

[52.1.12] The standard of proof

The standard of proof required in contempt of court proceedings is proof beyond reasonable doubt. Where there is doubt, such doubt ought to be resolved in favour of the alleged contemnor; see the Supreme Court decision in *Wee Choo Keong v. MBf Holdings Bhd* [1995] 3 MLJ 549 and *Chandra Sri Ram v. Murray Hiebert* [1997] 3 MLJ 240. The evidence when considered in its totality has to establish beyond reasonable doubt the guilt of the contemnor: *Lee Lim Huat v. Yusuf Khan bin Ghows Khan & Anor* [1997] 2 MLJ 472, (CA) per Gopal Sri Ram JCA. In sentencing, subject to questions of policy, each case must be dealt with according to its own facts. See also *Aligarh Municipal Board & Ors v. Ekka Tonga Madzoor Union & Ors.* [1970] AIR SC 1707; *Re Bramblevale Ltd* [1970] 1 Ch 128 and *Tay Seng Keng v. Tay Ek Seng Co Sdn Bhd* [1978] 1 MLJ 126; *Dean v. Dean* [1987] 1 FLR 517, CA; *Attorney-General v. Newspaper Publishing Plc & Ors* [1988] Ch 333, CA at 362.

Findings And Decision

[20] The suit arose from an agreement whereby the plaintiff sold the shares in the 3rd defendant to the 1st defendant. Part payment of the purchase price had been made to the plaintiff by the 1st defendant and leaving a balance of RM7.5 million outstanding. Before the full purchase was paid, the 1st defendant transferred the shares to the 4th defendant by a variation agreement and a loan agreement.

[21] The plaintiff contends that the transfer to the 4th defendant was *mala fide* and was transacted merely to prevent the plaintiff from recovering the shares from the defendants by restitution.

[22] The three letters which are now the subject matter of the present contempt proceedings (as verified by the affidavit of Kung Teong Eng, a director of the 4th defendant dated 18 October 2006) purporting to show that payments were in fact made to Cheng Poh Heng (solicitor for the purchaser) and hence prove one way or another that the 4th defendant was entitled to the shares.

[23] The writer of the first two letters dated 10 July 2003 and 13 October 2003 respectively were written by Dato' Abdul Ghani bin Yusof (the 4th contemnor – a director of the 2nd and 3rd defendants). The 3rd letter was written by a woman Rosnita binti Abdul Aziz – the 3rd contemnor who was a director of the 4th defendant company.

[24] All the defendants had admitted that the letters were not written on the day they were signed. Essentially the explanation of the defendants in answer to the contempt charges is that the letters were antedated only because they did not have any letter evidence to record the payments by Dato' Ghani to the 5th contemnor Cheng Poh Heng and to record the payment by the 4th defendant to Cheng Poh Heng, the solicitor for the 1st defendant. The letters were not meant to deceive the court. The 3 payments to Cheng Poh Heng were in fact made on the respective dates of the letters and these can be verified by the issuance of the two telegraphic transfers and the banking slip showing exactly when the payments were made which corresponded to the dates of the letters.

[25] It is pertinent to note that the affidavit of Kung Teong Eng a director of the 4th defendant is meant to verify the list of documents which the 4th defendant had in its possession in due compliance with O. 24 r. 3 of the RHC. It is not meant at this stage to verify the truth of their contents. It is open to the defendants, the 5th contemnor and persons who wrote the letters to say at the trial of this suit that in truth the letters were antedated. The mere antedating of the three letters would not under the circumstances constitute a contempt of this court which requires an intention on the part of the perpetrators to use them to mislead the court. Until and unless the alleged contemnors use the letters as evidence to show that they were in fact written on the dates as stated on the letters and not on the latter dates when they were signed, no contempt can be committed.

[26] A contempt proceedings is quasi criminal in nature and the plaintiff is obliged to prove the charges beyond reasonable doubt. The plaintiff has failed to do so.

[27] Enclosure 202 is dismissed with costs.

Enclosures 214, 223, 225, 231 And 246

[28] With respect to the defendants' applications encls. 214, 223, 225, 231 and 246 to set aside the leave granted to the plaintiff to initiate this contempt proceedings there is clearly no reason why they should be allowed.

[29] The leave was granted on the basis that there is evidence before the court that the three letters were written at the time when the addressee M/s Cheng Poh Heng & Co. had not yet set up shop at the said premises thereby providing ample justification for me to conclude that at that stage in all probability those letters had been fabricated. The court at that stage should not be concerned with the reasons and circumstances under which those letters were written but with the question of whether those letters were forged and therefore constitutes contempt which justifies a competent hearing.

[30] The applications to set aside must therefore be dismissed with costs.

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Enclosures 216, 218, 221, 242 And 244

[31] All applications by the respective parties to cross-examine the deponents of affidavits are now by reason of my findings rendered academic and are struck out with no order as to costs.

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